

**Notice of Allowability**

Application No.

10/612,721

Examiner

R. Alexander Smith

Applicant(s)

BURGSCHAT ET AL.

Art Unit

2859

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendment filed on 14 October 2004.
2. ☒ The allowed claim(s) is/are 1-13.
3. ☒ The drawings filed on 02 July 2003 are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☒ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☒ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
  - \* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
  - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date \_\_\_\_\_
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

*Reasons for Allowance*

1. The following is an examiner's statement of reasons for allowance of claims 1-13.

For independent claim 1, the prior art of record does not disclose or clearly suggest a device comprising a first body comprising an installation face; a second body comprising a scanning head, a scale element, wherein a profiled alignment device is provided on said second body, which works together with a complementary tape profile on said scale element for aligning said scale element with respect to said installation face of said first body in combination with the remaining limitations of the claim.

Claims 2-10 are allowed due to their dependency on the allowed claim 1.

For independent claim 11, the prior art of record does not disclose or clearly suggest a method for the directional attachment of a scale element of a linear position measuring system to an installation face of a first body comprising providing a second body comprising a scanning head, aligning a scale element, and providing a profiled alignment device on said second body, which works together with a complementary tape profile on said scale element for aligning said scale element with respect to said installation face of said first body in combination with the remaining limitations of the claim.

Claims 12 and 13 are allowed due to their dependency on the allowed claim 11.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

***Response to Remarks***

2. The Applicant's remarks with respect to the problems in the Office action mailed on September 9, 2004 are noted.

With respect to the automatic withdrawal of the claims being proper only when it is shown that the new claims are distinct from and independent from the original claims and the tests for determining distinct and independent inventions being set forth in chapter 800 of the MPEP, the examiner provided the following (in italics) in the Office action mailed on September 9, 2004:

*"Originally presented claims 1-13 were directed to a device and a method wherein a profile alignment device on a second body works together with a complementary tape profile on a scale element to align said scale element with respect to said installation face.*

*Newly submitted claims 14-16 are directed to a device and a method wherein a protective element applied to a scale works together with a device on a second body to set a spacing for scanning between said scale and said scanning head.*"

In this case MPEP 808.02(C) applies in that the two inventions would be classified together but would involve a different field of search which was implied by the underlining used in the Office action mailed on September 9, 2004 as repeated above.

With respect to claims 17 and 18, the Applicant is correct in assuming that since they were dependent from claim 16 that they would have been withdrawn for the same reasons as applied to claims 14-16 and that these claims should have been addressed in said Office action.

In conclusion, the Examiner acknowledges the Applicant's cancellation of claims 14-18 in order to expedite issuance of claims 1-13 and the Applicant's right to file claims 14-18 in a divisional application.

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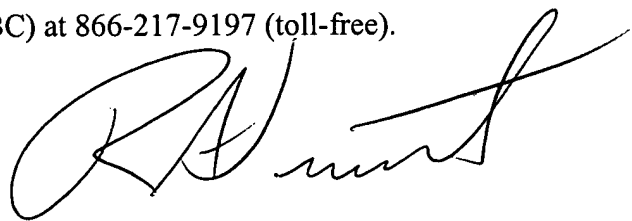
*Conclusion*

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to R. Alexander Smith whose telephone number is 571-272-2251.

The examiner can normally be reached on Monday through Friday from 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F. Gutierrez can be reached on 571-272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'R. Alexander Smith', is positioned above the printed name and title.

R. Alexander Smith  
Examiner  
Technology Center 2800

RAS  
October 26, 2004